Yau Day Ching & Anor v Tan Kian Lai

HIGH COURT (MUAR) — CIVIL SUIT NO 23–06 OF 2009
UMI KALTHUM J
27 JULY 2011

Land Law — License — Gratuitous license — Defendant's father allowed to remain on plaintiff's land without paying rent — Whether father's death terminated license — Whether defendant continued to occupy land as trespasser — Whether defendant had locus standi to apply for administration of deceased land owner's estate when not his issue or beneficiary — Whether defendant could obtain adverse possession through his father on principle of tacking — National Land Code s 341

The plaintiffs, who were joint owners of a piece of land ('the land') sued the defendant for vacant possession of that portion of the land occupied by the defendant and for RM34,694.38 in damages. The defendant counterclaimed for a declaration that the plaintiffs had invalidly obtained ownership of the land. He also wanted a half share in the property. The land was originally registered in the name of the plaintiffs' father ('Yau'), who had come on to the land with his wife and children, built a house and subsequently obtained a temporary document of title for the property. Later, the defendant's father ('Tan') came on to the land, moved into a disused shed near the plaintiffs' house and later converted it into his home. Many years later, the defendant and his father built a brick house on the same site as the shed despite objections to its construction by the plaintiffs' family. The defendant claimed Tan had stayed on the land since 1952 and that both Tan and Yau had shared in paying the quit rent on the land. The defendant said he had himself stayed on the land without objections from Yau and his family until 1999, when the plaintiffs began seeking vacant possession against him through solicitor's letters and court action. When Yau died intestate in 1988, three applications were made at different times by different parties to the land administrator for letters of administration of his estate under the Small Estates (Distribution) Act 1955. The first order granted administration to the first plaintiff and her brother. This order was replaced four years later by an order granting administration jointly to the defendant and another person. Subsequently, a third order, with the consent of all the beneficiaries, made the first plaintiff the sole administrator of the estate. Based on the third order, the plaintiffs obtained a High Court order to have the land transferred to their names. By way of damages, the plaintiffs sought (i) RM 2,240.50 as arrears of half the quit rent on the land since 1975. The plaintiffs claimed the defendant and his father had stopped paying quit rent since 1974 (ii) RM1,253.88 as half the assessment on the land since 2005

and (iii) RM31,200 as rent for use of the land at RM100 per month from the time the plaintiffs protested against the defendant's building of his house on the land in 1984.

Held, allowing the claim with costs and dismissing the counterclaim with costs:

(1) The defendant's father was a gratuitous licensee since he never paid any rent to the plaintiffs' late father. The license was given to the defendant's father and it terminated on his demise. With his father's death, the defendant's continued occupation of the land made him a trespasser. The plaintiffs were entitled to vacant possession of that portion of the land occupied by the defendant (see paras 20–21 & 41).

(2) The defendant was neither Yau's issue nor his beneficiary. He had no locus standi to participate at the hearings of the land administrator under the Small Estates (Distribution) Act 1955 or to have applied for administration. The land administrator's order of 15 May 2001 (the second order) was therefore invalid (see paras 23 & 27).

(3) The defendant did not and could not challenge the validity of the various orders obtained by the plaintiffs to transfer the land to their names as he had no locus standi or any interest in the land. The transfer of the land to the plaintiffs was valid (see paras 30–31).

(4) The defendant did not obtain adverse possession through his father by the principle of 'tacking' as this principle was not recognised under the National Land Code, s 341 in particular (see para 35).

[Bahasa Malaysia summary

Plaintif-plaintif, merupakan pemilik bersama sebidang tanah ('hartanah') mendakwa defendan untuk milikan kosong bahagian hartanah yang didiami defendan dan untuk RM34,694.38 sebagai ganti rugi. Defendan menuntut balas bagi pengisytiharan bahawa plaintif-plaintif telah mendapatkan milikan hartanah tersebut secara tidak sah. Dia juga mahu sebahagian daripada hartanah tersebut. Hartanah tersebut pada asalnya didaftarkan di bawah nama ayah plaintif-plaintif ('Yau'), yang datang ke hartanah tersebut bersama isteri dan anak, membina rumah dan kemudiannya mendapatkan dokumen hak milik keluaran sementara untuk hartanah tersebut. Kemudiannya, ayah defendan ('Tan') datang ke hartanah tersebut, berpindah ke pondok berdekatan rumah plaintif-plaintif dan mengubahnya menjadi rumahnya. Beberapa tahun selepas itu, defendan dan ayahnya membina rumah batu pada tapak yang sama dengan pondok tersebut meskipun terdapat halangan-halangan terhadap pembinaannya oleh keluarga plaintif-plaintif. Defendan mendakwa Tan telah mendiami hartanah tersebut sejak tahun 1952 dan bahawa Tan dan Yau telah berkongsi membayar cukai tanah hartanah tersebut. Defendan menyatakan bahawa dia sendiri mendiami hartanah

tersebut dan tanpa halangan-halangan daripada Yau dan keluarganya sehingga 1999, apabila plaintif-plaintif mula menuntut milikan kosong terhadapnya melalui surat-surat peguamcara dan tindakan mahkamah. Apabila Yau meninggal tidak berwasiat pada 1988, tiga permohonan dibuat pada masa berbeza oleh pelbagai pihak kepada pentadbir tanah bagi surat-surat pentadbiran estetnya di bawah Akta Pembahagian Harta Pusaka Kecil 1955. Perintah pertama membenarkan pentadbiran kepada plaintif pertama dan adiknya. Perintah ini digantikan empat tahun kemudian dengan perintah membenarkan pentadbiran bersama dengan defendan dan seorang lainnya. Seterusnya, perintah ketiga, dengan persetujuan kesemua benefisiari, menjadikan plaintif pertama sebagai satu-satunya pentadbir estet tersebut. Berdasarkan perintah ketiga, plaintif-plaintif mendapatkan perintah Mahkamah Tinggi agar hartanah tersebut dipindahkan kepada nama-nama mereka. Sebagai ganti rugi, plaintif-plaintif menuntut (i) RM 2,240.50 sebagai tunggakan separuh daripada cukai tanah hartanah tersebut sejak 1975. Plaintif-plaintif mendakwa defendan dan ayahnya telah berhenti membayar cukai tanah sejak 1974 (ii) RM1,253.88 sebagai sebahagian taksiran tanah sejak 2005 dan (iii) RM31,200 sebagai sewa bagi penggunaan hartanah tersebut pada RM100 sebulan daripada tarikh plaintif-plaintif memprotes defendan membina rumahnya di tanah tersebut pada 1984.

Diputuskan, membenarkan tuntutan dengan kos dan menolak tuntutan balas dengan kos:

(1) Ayah defendan adalah pelesen berganjaran 'gratuitous licensee' memandangkan dia tidak pernah membayar sebarang sewa kepada arwah ayah plaintif-plaintif. Lesen diberikan kepada ayah defendan dan ianya dibatalkan sepemergiannya. Defendan yang terus-menerus mendiami hartanah tersebut setelah kematian ayahnya, menjadikan dia seorang penceroboh. Plaintif-plaintif berhak untuk milikan kosong bahagian tanah yang didiami oleh defendan (lihat perenggan 20, 21 & 41).

(2) Defendan bukanlah diberikan lesen oleh Yau mahupun benefisiarinya. Dia tidak mempunyai locus standi untuk menyertai pendengaran pentadbir tanah di bawah Akta Pembahagian Harta Pusaka Kecil 1955 atau perlu memohon untuk pentadbiran tersebut. Perintah pentadbir tanah pada 15 Mei 2001 ('perintah kedua') dengan ini adalah tidak sah (lihat perenggan 23 & 27).

(3) Defendan tidak seharusnya dan tidak boleh mencabar kesahan pelbagai perintah yang didapatkan oleh plaintif-plaintif untuk memindahkan hartanah tersebut kepada nama-nama mereka memandangkan defendan tidak mempunyai locus standi atau sebarang kepentingan di dalam hartanah tersebut. Pemindahan tanah tersebut kepada plaintif-plaintif adalah sah (lihat perenggan 30–31).

(4) Defendan tidak mendapatkan milikan bertentangan menerusi ayahnya

melalui prinsip 'tumpang-cagar' memandangkan prinsip ini tidak diakui di bawah Kanun Tanah Negara, khususnya s 341(lihat perenggan 35).]

Notes

For cases on gratuitous license, see 8(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 3623–3625.

Cases referred to

Verama v Amarugam & Anor [1982] 1 MLJ 107 (refd)

Legislation referred to

Distribution Act 1958 s 61
Limitation Act 1953
National Land Code ss 340, 341
Small Estates (Distribution) Act 1955

Yong Yee Yen (YY Yong & Associates) for the plaintiffs.
(Saliza & Co) for the defendant.

Umi Kalthum J:

THE CLAIM

[1] The plaintiffs' claim against the defendant is for vacant possession of a piece of land known as HS(M) 11395, Lot No 6973, Mukim Kluang, Johor ('the said land') and for damages.

THE COUNTERCLAIM

[2] The defendant's counterclaim against the plaintiffs is for a declaration that the ownership of the said land by the plaintiffs was invalidly obtained and is ultra vires, and for half share of the said land.

THE FACTS

[3] The subject matter in dispute is the said land. The ownership of the said land is presently registered in the first and the second plaintiffs' names (see pp 65–66, D) in equal half share each.

[4] The said land was originally registered in the name of Yau Chai Huat, who was the father of the plaintiffs. Yau Chai Huat died intestate on 23 December 1976. Upon the death of Yau Chai Huat there were three applications made by different parties for letters of administration under the Small Estates (Distribution) Act 1955 to administer his estate comprising the

said land and which were granted orders as follows:

(a) vide *Guaman Pembahagian* No 203 of 1996, the first plaintiff and her older brother Yau Hock Sing were granted the letters of administration via order dated 12 March 1997 (see p 17, D);

(b) upon a subsequent application, the defendant and Lau Hock Sing were granted the letters of administration via order dated 15 May 2001, replacing the plaintiffs as the administrator vide *Guaman Pembahagian* No PTDK(SED) 203 of 1996 (p 32, D); and

(c) upon a yet another application, the first plaintiff was granted the letters of administration as the sole administrator via order dated 27 March 2002, replacing the defendant and Yau Hock Sing as the administrators vide *Guaman Pembahagian* No PTDK(SED) 203 of 1996 (p 45, D).

[5] The first and second plaintiffs had filed on Originating Summons Action No 24(L)380 of 2003 and had obtained an order dated 23 September 2003 for the distribution and transfer of the title to the said land to the first and second plaintiffs in half share each (pp 51–52, D). Hence the title of the said land was subsequently transferred to the first and second plaintiffs in equal half share each.

THE PLAINTIFFS CASE

[6] It is the plaintiffs' case that sometime in 1951, Yau Chai Huat, his wife SP1 and his children were ordered by the government to move on to the said land. Yau Chai Huat had built a wooden house on the said land as seen in the photograph on p 117, D. SP1 testified that they had moved on to the said land on 17 December 1951 as proved vis the 'register of tenants' on p 57, D, which recorded all tenants who had arrived in the area. The name of Yau Chai Huat and members of his family were recorded in the said register of tenants.

[7] After settling on the said land, Yau Chau Huat applied for the said land. In 1953 the said land was alienated to him under AO (approved occupants) 437 as proved in the register of approved occupants exhibited on p 58, D. In 1974 a temporary document of title was issued to Yau Chai Huat held under HS(M)11395, Lot 6973 (pp 59–61, D).

[8] According to SP1, the defendant's father by the name of Tan Lin first came on the said land sometime in 1960. There was a shed on the said land erected by a logging company for their workers. After the logging activities had stopped, Tan Lin had moved into the shed and converted it to his home.

[9] In 1983 (or 1984), the defendant and his father built a brick house on the same site as the shed (p 116, D). SP1 and SP2 had objected to its construction to no avail.

[10] In 1988, after the death of Yau Chai Huat, the plaintiffs and their mother had built a new house (p 117, D) beside the defendant's house since they were told that part of the wooden house they had lived in was on government land.

[11] In 1999, action was taken against the defendant for vacant possession of the said land at the Kluang Magistrate Court. That matter was subsequently withdrawn where parties were advised by the court to settle the matter amicably.

[12] To date the defendant has refused to give vacant possession of the said land, and hence the plaintiffs have brought this action against him.

THE DEFENDANT'S CASE

[13] It is the defendant's case that his father had stayed on the said land since 1952, as he was ordered to do so by the government during the Malayan emergency. His father built a house on the said land under orders of the government. Ever since he was born the defendant had been staying on the said land.

[14] According to the defendant, his late father and Yau Chai Huat had shared in paying the quit rent (Q & A 27, D1). His late father had applied to the land office for the land, but did not receive any response.

[15] The defendant had stayed on the said land without any objections raised by Yau Chai Huat and his family, until in 1999 when the plaintiffs instituted on action for vacant possession against the defendant in the magistrate court in Kluang.

[16] Upon the death of Yau Chai Huat, the defendant together with Lau Hock Sing attempted to obtain and did obtain letters of administration from the land administrator to administer the estate of Yau Chai Huat in respect of the said land vis order dated 15 May 2001. Since then the first plaintiff was able to obtain another order dated 27 March 2002 replacing the defendant and Yau Hock Sing as the administrators.

[17] In view of this, and the fact that the plaintiffs subsequently obtained the High Court order dated 23 September 2003 and had caused the title to the said land to be transferred and registered in their respective names in half share each, the defendant in his counterclaim prayed for a declaration that the ownership of the said land by the plaintiffs was invalidly obtained, and claimed to be entitled to half share of the said land.

THE ISSUES

[18] The parties had agreed to 11 issues for determination by the court. They are:

(a) issues one to four, whether orders dated 12 March 1997, 15 March 2011 and 27 March 2002 under *Guaman Pembahagian* No 203 of 1996, and 23 September 2003 under the originating summons application are valid;

(b) whether the transfer of the said land by the land administrator to the plaintiffs was valid;

(c) whether the defendant had stayed on a portion of the said land since a few years ago without the consent of the plaintiffs or their father;

(d) whether the defendant had paid rent to Yau Chai Huat and or the plaintiffs;

(e) whether the defendant had obtained an interest in the said land under the principle of tacking through his father;

(f) whether the plaintiffs had demanded for vacant possession several times and whether they had the right to vacant possession;

(g) whether the plaintiffs had suffered losses; and

(h) whether the defendant had received the notice to quit dated 15 July 2002.

THE FIRST TO FOURTH ISSUES

Whether orders dated 12 March 1997, 15 May 2001, and 27 March 2002 under Guaman Pembahagian No 203 of 1996, and 23 September 2003 under the originating summons application are valid

[19] The said land had been registered in Yau Chai Huat's name. He therefore was the proprietor of the said land with indefeasible title to it by virtue of s 340 of the National Land Code ('NLC'). The defendant's version on how his father Tan Lin came to be on the said land in 1952 was not proved as in the case of the plaintiffs' father, Yau Chai Huat. I am inclined to believe the version as testified by SP1 on how her late husband settled on the said land, and

that the defendant's late father, Tan Lin later came on the said land in 1960 and stayed in the shed, and that much later Tan Lin had rebuilt the shed into a brick house. It would also explain why the defendant's father did not get any response to his application for that portion of the said land from the land office. In any case, the defendant was not born at the material time and he merely gave testimony on what was purportedly told to him by his late father. The testimonies given by SD2 and SD3 are questionable since no proof was tendered by the defendant on Tan Lin's occupation of the said land in 1952.

[20] I agree with the submission of the plaintiffs' counsel that the defendant's father was a gratuitous licensee since he never paid any rental to the plaintiffs' late father. At most the defendant's father paid half of the quit rent/*cukai* AO for occupying half of the said land. But as of 1974, the defendant and his father stopped paying the quit rent/*cukai* AO. The gratuitous license was given to the defendant's father and it was terminated on his demise. See the case of *Verama v Amarugam & Anor* [1982] 1 MLJ 107.

[21] With the defendant's father's death, the defendant's continued occupation of the said land has made the defendant a trespasser.

On order dated 12 March 1997 (first issue)

[22] When Yau Chai Huat died intestate on 23 December 1976, the persons who are entitled to benefit under the estate are his children and his widow — s 6(1) of the Distribution Act 1958. It is obvious to me that the defendant does not fall under the category 'children' of Yau Chai Huat. In view of this, I find the defendant's contention in regard to the order dated 12 March 1997 as having no merits and I therefore find that the said order is valid, but that it had since then been superceded by a subsequent order.

On order dated 15 May 2011 (second issue)

[23] This order was obtained by the defendant whereby he became a co-administrator. Being a trespasser on the said land, and not the child of Yau Chai Huat, I agree that the defendant has no interest and locus standi to make the application in the first place. Therefore the order dated 15 May 2001 is invalid. In any case this order had since been superceded by the order dated 27 March 2002.

On order dated 27 March 2002 (third issue)

[24] According to the first plaintiff, she was appointed as the sole administrator of the Yau Chai Huat's estate. At the hearing of her application she testified that all beneficiaries were present and agreed to her appointment.

As I have found that the defendant has no interest in the said land and is not a beneficiary of Yau Chai Huat's estate, his presence at the hearing of the first plaintiff's application before the land administrator is immaterial. As such, I agree that the order dated 27 March 2002 is valid.

On order dated 23 September 2003 (fourth issue)

[25] As far as I am concerned, when the High Court granted the plaintiffs' application on 23 September 2003, it was based on the fact that all the beneficiaries of the late Yau Chai Huat had agreed to the application. The plaintiffs' application to the High Court would appear to be based on the order dated 27 March 2002 by the land administrator. I find the High Court order is valid and remains valid until set aside or successfully appealed against.

THE FIFTH ISSUE

Whether the transfer of the said land to the plaintiffs by the land administrator was valid

[26] It is not disputed that the said land was registered in Yau Chai Huat's name as the registered proprietor. Thus I agree that the transfer of the title to the said land from Yau Chai Huat, the deceased, to the plaintiffs' names is a matter of succession from the father to the children under the Distribution Act 1958.

[27] As the defendant is not the issue of Yau Chai Huat, he is not a beneficiary of Yau Chai Huat and therefore has no locus standi to participate at the hearing of the land administrator under the provisions of the Small Estates (Distribution) Act 1955 vis the order dated 27 March 2002. The first plaintiff/SP2 testified that all beneficiaries had appeared at the hearing and had agreed to her being appointed the sole administrator of Yau Chai Huat's estate. SP2 was never challenged on this aspect. In any case, SP2 testified that her counsel had via leter dated 25 March 2002 did inform the defendant's counsel Saliza & Co in regard to the date of hearing of SP2's application to be appointed as the sole administrator of Yau Chai Huat's estate on 27 March 2002. The defendant's counsel, however, replied (on p 42, D) via letter dated 26 March 2002 that:

> ... kami hanya mewakili Tan Kian Lai (*the Defendant*) sehingga tarikh perbicaraan yang lalu sahaja.

[28] Notwithstanding the defendant's counsel stating so, I agree with the submission of the plaintiffs' counsel that the defendant was aware of the proceedings before the land administrator on 27 March 2002 based on the notes of proceedings by the land administrator on p 44, D, where it was noted as follows:

> Catitan
>
> *Peguambela bagi Tan Kian Lai telah hadir dan membuat bantahan ke atas keputusan pembahagian harta simati yang dibuat pada 27/03/2002*. Oleh itu perintah tidak dikeluarkan sementara mendapat pandangan daripada pihak yang berkenaan. Di samping itu bayaran perintah pembahagian tidak dibayar oleh pemohon. (Emphasis added.)

[29] It would appear that based on the order dated 27 March 2002 by the land administrator, the plaintiffs applied to the High Court at Muar and obtained an order dated 23 September 2003 (p 51, D) to distribute and transfer the said land to themselves. Based on the said High Court's order, the said land was ordered to be transferred to the plaintiffs in half equal shares via the land administor's order dated 17 June 2004 (p 53, D). The said land was then duly registered in the plaintiffs' names on 14 October 2004 (p 55, D).

[30] Throughout these proceedings the defendant did not see it fit to challenge the validity of the various orders obtained by the plaintiffs. In any case, I do not see how the defendant could have challenged them since, and as I have alluded to earlier, he has no locus standi vis the estate of Yau Chai Huat nor any interest in the said land.

[31] I therefore find that the transfer of the said land to the plaintiffs by the land administrator was valid.

THE SIXTH ISSUE

Whether the defendant stayed on that portion of the said land since a few years ago without the permission of the plaintiffs or their father

[32] From the following facts I find that the defendant stayed on that portion of the said land without the permission of the plaintiffs:

(a) the defendant admitted that the plaintiffs took action against him for vacant possession in the Kluang Magistrate Court in 1999;

(b) SP1, the mother of the plaintiffs, testified that she did object to the construction of the defendant's house on that portion of the said land in 1983, but that her objection was ignored;

(c) the first plaintiff/SP2 testified that she did instruct her counsel to issue the notice dated 15 July 2002 to the defendant demanding the defendant to vacate the said land;

(d) the defendant admitted that in the year 2003, he received the writ of summons from the plaintiffs claiming for vacant possession.

[33] So even if there was any prior permission/license for the defendant to stay on the said land, that permission was withdrawn as far back as in 1999, certainly before the defendant built his present house in 1983.

THE SEVENTH ISSUE

Whether the defendant paid rent

[34] All the plaintiffs' witnesses testified that no rental was ever paid by the defendant for the use of that portion of the said land. This was not denied by the defendant, seeing that there was no tenancy granted between the plaintiffs and defendant.

THE EIGHTH ISSUE

Whether the defendant obtained adverse possession through his father by the principle of tacking

[35] I agree with the submission of learned counsel for the plaintiffs that the principle of 'tacking' is not recognised under the NLC, s 341 in particular. Section 341 in fact provides that adverse possession of land for any length of time shall not constitute a bar to the bringing of any action for the recovery thereof by the proprietor and that the Limitation Act 1953 shall not operate to extinguish any title to or interest in the land. In view of this I would answer that the defendant did not obtain adverse possession through his father by the principle of tacking.

THE NINTH ISSUE

Whether the plaintiffs had demanded several times for vacant possession and whether they were entitled to vacant possession

[36] It was admitted by the defendant that the plaintiffs took action against

him for vacant possession in the Kluang Magistrate Court in 1999 (Q & A 34–36, D1). The matter was withdrawn as the parties were persuaded by the court to settle the matter.

[37] According to SP1, she did protest against the construction of the defendant's house on the said land in 1983 but the defendant had ignored her protests. This testimony was admitted to by the defendant.

[38] The first plaintiff/SP2 stated that she did instruct her counsel to issue the notice dated 15 July 2002 on p 46, D, to the defendant demanding the defendant to vacate the said land. Whether or not the said notice was issued at her istance or at the instance of her brother Yau Hock Sing (as stated in the said notice), who was then the sole administrator of Yau Chai Huat's estate, to me would not be relevant for the purpose of determining this issue, since what is important is that the plaintiffs and members of their family had demanded the defendant to vacate that portion of the said land. Moreover the first plaintiff did also protest against the defendant building his house on that portion of the said land, to which the defendant simply ignored.

[39] The defendant also admitted in Q & A 42, D1, that in the year 2003 he received a writ of summons from the plaintiffs for vacant possession.

[40] In view of the above, I find that the plaintiffs had demanded several times for vacant possession of that portion of the said land by the defendant.

[41] Further to my finding before this that the defendant is a trespasser upon the death of the defendant's father in 1986, it follows that the plaintiffs are entitled to demand for vacant possession of that portion of the said land.

THE TENTH ISSUE

Whether the plaintiffs suffered losses

[42] It was testified by SP1 and the plaintiffs that the defendant's father and the defendant had stayed on half of the said land since 1960 without paying any quit rent. Whilst the defendant and the defendant's witness SD2 testified that the defendant's father did pay half of the quit rent until 1974, the defendant was unable to prove his assertions other than by giving oral evidence.

THE QUIT RENT

[43] The plaintiffs had tendered receipts of quit rent paid in the name of Yau

Chai Huat since 1971. But the plaintiffs are prepared to claim for losses suffered by them in the form of the quit rent beginning from 1975 until the present (2011) that is, 36 years calculated as follows:

Total quit rent from 1975 to 1997		RM
at RM105pa (22 years x RM 105)	...	2,310
Total quit from 1998 to 2005		
at RM143pa (7 years x RM 143)	...	1,001
Total quit rent from 2006 to 2011		
at RM234pa (5 years x RM234)	...	1,170
		RM4,481
Half of the quit rent from 1975 to 2011		RM 2,240.50

The quit rent rates are calculated from the available receipts found on pp 71–84, D. Seeing that the quit rent falls due to be paid every year, I accept the manner of calculating the plaintiffs' losses vis the defendant in the manner stated even though not all receipts for the relevant years were tendered.

THE ASSESSMENT

[44] The SP3/plaintiff two claimed that the plaintiffs had been paying the defendant's assessment since year 2005, the amount being RM208.98 per year (being the plaintiffs' half share) x six years (2005 to 2011) = RM1,253.88. Again I understand and agree with the logic used by learned counsel for the plaintiffs in calculating the losses in respect of the assessment. The receipts enclosed for this purpose can be found on pp 107–115, D.

THE RENTAL

[45] SP3 testified that the rental of the house like that of the defendant's would fetch a rental of about RM350–RM400 a month (Q & A 13, P3).

[46] Learned counsel for the plaintiffs submitted that being the rental of the house then the value for the use of half of the said land is at RM100 per month, calculated from the time the plaintiffs protested against the building of the defendant's house in 1984. This then would mean a span of 26 years (1984–2010) and the rental would come to the sum of 26 years x 12 months x RM100 = RM31,200.

[47] Even though strictly speaking the plaintiffs should have engaged a valuer to value the cost of using a portion the said land by the existence of the defendant's house, but as this would incur higher costs on the plaintiffs, I

accept the submission of learned counsel for the plaintiffs in this too, as a rental of a mere RM100 per month to my mind is a very nominal charge.

[48] I therefore allow the plaintiffs damages to the amount of *RM34,694.38* (RM2,240.50 + RM1,253.88 + RM31,200).

THE ELEVENTH ISSUE

Whether the defendant had received the notice dated 15 July 2002 to vacate the said land

[49] In her testimony, SP2 stated that she had instructed her solicitor to send the letter dated 15 July 2003 on p 46, D, to the defendant to vacate the said land. She was certain of this even though by the said letter, the solicitors had stated that they were 'acting for Yau Hock Sing'. The said letter was marked 'REGISTERED POST'.

[50] Even though the defendant had specifically denied receiving the said notice in para 7 of the statement of defence, in his testimony I find that he did not deny receiving the said notice. This fact is significant as the said notice was enclosed on p 46, C, as the defendant's bundle of documents. I agree with the submission of the plaintiffs' counsel that this meant that the defendant must have given the said notice to his counsel to enable his counsel to enclose it in the defendant's bundle C. More so since the plaintiffs' bundle of documents marked 'B' does not have a copy of the said notice enclosed in it. The common bundle marked 'D' has a copy of the said notice but that copy was obtained by photocopying it from bundle C.

[51] I therefore find that the defendant did receive the said notice to vacate the said land and the fact that the letter was marked 'REGISTERED POST' is also significant in my findings.

CONCLUSION

[52] In view of the reasons I have adumbrated above I allow the plaintiffs' claim:

(a) in prayer 14(a) of the statement of claim;

(b) damages to the amount of RM34,694.38;

(c) interest on the sum of RM34,694.38 at 8%pa from the date of filing of the writ summons (10 May 2005) until full realisation; and

(d) costs at RM15,000.

[53] I also dismiss the defendant's counterclaim with costs at RM15,000.

Claim allowed with costs and counterclaim dismissed with costs.

Reported by Ashok Kumar